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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,807	01/25/2002	Jon Ocel	P0010412.00	9381

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Medtronic CardioVascular
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EXAMINER

GIBSON, ROY DEAN

ART UNIT	PAPER NUMBER
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3739

NOTIFICATION DATE	DELIVERY MODE
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07/06/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

rs.vasciplegal@medtronic.com

Office Action Summary	Application No. 10/056,807	Applicant(s) OCEL ET AL.	
	Examiner Roy D. Gibson	Art Unit 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 54 and 56-71 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 71 is/are allowed.
- 6) ☒ Claim(s) 54 and 56-70 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 1/25/2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Entry of Amendment

Applicant's amendment filed on April 15, 2010 is acknowledged. Claim 56 has been cancelled and claim 71 has been amended by the applicant and, therefore, claims 54 and 56-71 are currently pending.

Prior Rejections or Objections

The following comments pertain to the rejections or objections in the most recent Office action mailed on March 9, 2009. Rejections under 35 U.S.C. 103 are maintained as detailed below.

Specification

The disclosure is objected to because of the following: the indicator light of claims 54 and 71 is recited in the Specification but is not given a reference number.

Appropriate correction is required.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the indicator light located on the electrosurgical instrument must be shown with the reference no. provided in the Specification or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application.

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Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 54, 56-65 and 67-70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fritzsche (5,441,499) in view of Jandak et al. (6,176,856) and further in view of Gantelia (5,599,348).

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Regarding claims 54 and 71, Fritzsich discloses a medical device for use in a medical procedure comprising:

a manually graspable handle (Figure 1, # 35);

an elongated shaft (11) projecting from the handle, the shaft being sized and shaped to be positioned through a small incision in the chest of a patient and defining a proximal section comprising a rigid, elongated metal tube and a distal section comprising metal and a rounded distal tip portion (Figure 9, # 14)

adapted to be slid relative to tissue, the shaft including a joint comprising a pin (Figure 9) that moveably couples the distal section to the proximal section

thereby allowing the distal section to pivot relative to the proximal section;

a non-conductive material (Figure 3, # 43) surrounding at least a portion of the elongated shaft;

a remote actuator (Figure 1, # 36) proximal the distal section for selectively controlling the actuation of the joint;

a power source; and

a switch located on the medical device for activating the delivery of electrical power from the power source, wherein the light is visible when power is being delivered (col. 4, line 23-5, line 65, col. 6, line 56-col. 7, line 33).

But, Fritzsich fails to specifically disclose the power source is a battery and a light is located on the medical device and electrically coupled to the power source. But, Jandak et al. teach the use of a dc source such as a battery to power the electrosurgical instrument (see Figure 14, #108 and col. 13, lines 46-50) and Gantelia teaches an indicator light on the electrosurgical instrument that

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is visible when power is being delivered (Figure 1, # 24 which is in the same position as LED, # 94 and col. 5, line 64-col. 6, line 11). Therefore, at the time of the invention it would have been obvious to one of ordinary skill in the art to modify the device of Fritzsche, as taught by Jandak et al. and Gantelia to provide a light that is battery powered and visible when the power is being delivered.

Regarding claims 56-59, Fritzsche discloses the distal section includes a passage and an opening or, as a design choice, a slot (Figure 9).

Regarding claims 60-63, Fritzsche discloses the actuator comprises a knob and the optional claims of a button, lever or slide are merely obvious design choices for one of ordinary skill in the art.

Regarding claims 64 and 65, Fritzsche discloses wherein at least a portion of the distal section of the elongated shaft defines a uniform radius of curvature (Figures 1-9); and wherein the handle is rigidly coupled to the shaft such that the shaft is readily manipulated via movement of the handle (Figure 1).

Regarding claims 67-70, Fritzsche discloses wherein the actuator is located at the handle;

wherein the proximal section includes an internal lumen (Figure 3, # 37);
wherein at least a portion of the shaft is malleable (Figure 3); and
wherein the medical procedure is capable of an ablation procedure (RF electrode 13 and col. 1, lines 35-36).

Claim 66 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fritzsche and Jandak et al./Gantelia and further in view of Swanson et al. (6,123,702). Neither Fritzsche nor Jandak et al./Gantelia disclose a sensor located

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at the distal section of the elongated shaft. But, Swanson et al. disclose a system for controlling power in an electrosurgical probe wherein a sensor ((Figure 1, # 120) is located at the distal section and provides a signal for temperature control of the RF source (col. 7, lines 1-17). Therefore, at the time of the invention it would have been obvious to one of ordinary skill in the art to modify the device of Fritzsche/Jandak et al./Gantelia, as taught by Swanson et al., to provide a sensor for measuring temperature at the distal section of the shaft or probe.

Response to Arguments

Applicant's arguments filed 4/15/2010 have been fully considered but they are not persuasive. The independent claims do not specifically disclose the location of the indicator light and the Specification recites: "an indicator light otherwise located on the electrosurgical instrument can be inductively coupled to the power source and adapted such that when power is being delivered to the electrosurgical instrument, the light is visible to the surgeon or other users.

Therefore, if the instrument of Fritzsche is being used with an endoscope, and the light from the endoscope used to illuminate the target is on, it would be obvious to a skillful artisan that an additional indicator light could be provided "on the medical device" to indicate to the surgeon that the power is being delivered to the instrument independent of the light of the endoscope. Such an indicator light could be placed anywhere on the "medical device" so that it can be viewed by the surgeon, and the suggestion of an LED by Gantelia would not result in excessive bulk, weight or size of the system as argued by the applicant.

Allowable Subject Matter

Claim 71 is allowed.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Brown et al. (US 2002/0120263) discloses an indicator light (Figure 4, # 72) along with a typical switch [0042].

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy D. Gibson whose telephone number is 571-272-4767. The examiner can normally be reached on Tu-Th, 7:30 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Roy D. Gibson/
Primary Examiner
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July 1, 2010